

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION, et al.,
Plaintiff,

VS.

NO. CV 22-00222 JB/KK

Hector Balderas, Attorney General
for the State of New Mexico, et al.
Defendants.

Transcript of Motion Proceedings before
The Honorable James O. Browning, United States
District Judge, Albuquerque, Bernalillo County,
New Mexico, commencing on May 17, 2022.

For the Plaintiff: Mr. Eddie Greim; Mr. Matt Miller;
Mr. Carter Harrison

For the Defendant: Ms. Olga Serafimova

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EXHIBIT

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1 know what their birthday is. If it's a relative,
2 they know the same thing.

3 Sometimes, though, if they're doing a
4 precinct pull, they'll see data that they know is
5 wrong. And so one thing you'll hear about -- and
6 I'm afraid I'm getting so far into the details, I'm
7 just giving the witnesses' testimony here. But you
8 can look and see certain codes that are put in when
9 they can't read someone's birthday, like 01/00 or
10 something like that, or 1901, some placeholder that's
11 typed in. And you know, when you put all the data
12 together and see all those, it's obvious what they're
13 doing. But then around an election someone sees
14 that, they say: Well, a 110-year-old person voted.
15 So there are certain things you can find on your own
16 with your own background knowledge. You don't have
17 to be some kind of a specialist.

18 Now, other people can use the data for
19 that, and Voter Reference Foundation, as you'll
20 learn, has former election administrators who
21 understand this. They've worked in many states.
22 They've hired people from many states who work with
23 Secretaries of State. And they can do other work
24 that I don't frankly understand.

25 THE COURT: Well, can you walk us through

1 how Voter Reference wants to crowd source its
2 supporters to access, use the data?

3 MR. GREIM: Sure, I can. And again, Your
4 Honor, I'll tell you these witnesses here can do it,
5 but I'll give you a very short version.

6 You know, crowd sourcing is basically
7 everybody out there -- you know, it's like Wikipedia
8 in a way. Everybody out there who has information
9 about this, go in, and if you see a mistake, contact
10 the administrator. So that's crowd sourcing. You
11 might even talk to your own neighbors, talk to your
12 own family members. Aunt Lois, didn't she move to
13 Tucson last year? Yeah, she did. Well, doing your
14 own work is what crowd sourcing is, and then
15 reporting that to the Secretary of State.

16 THE COURT: I'm circling back to the
17 election day question. If Voter Ref is concerned
18 with voter fraud, then doesn't it need to access
19 voter rolls as they stand on election day?

20 MR. GREIM: Well, it's not necessarily
21 about -- I shouldn't even say "necessarily." It's
22 not really about voter fraud, it's really not about
23 voter fraud. It's really about transparency of the
24 election rolls. I mean, if no voter fraud is found,
25 Your Honor, then wonderful. Then we've also done our

1 statement you want to make?

2 MS. SERAFIMOVA: Thank you, Your Honor.

3 THE COURT: Let me start with your state
4 law, since I've kind of been rough on your
5 interpretation of the state law. And I have the
6 statutes in front of me. Walk us through which
7 statutory provisions make Voter Reference's use of
8 the data unlawful?

9 MS. SERAFIMOVA: That would be 1-4-5.6,
10 Your Honor, which is a standalone fourth degree
11 felony, which incorporates by reference 1-5-22 -- not
12 in its entirety -- but the purposes that 22
13 prohibits. It also incorporates by reference 1-5-23,
14 which says that altering voter data is illegal.

15 So 1-5 is -- that is the Voter Records
16 Systems Act. It is a different article than 1-4-5.6,
17 which is the statute that we are under. And so Your
18 Honor is correct those statutes on their own create
19 criminal penalties for people who work for the State,
20 or otherwise have access to voter files by virtue of
21 their employment. So those are separate criminal
22 penalties under Article 5.

23 Then we go under Article 4, and we have two
24 relevant statutes. One is 1-4-5.5, which says every
25 requester has to sign an affidavit promising certain

1 things. And then we have 1-4-5.6, which says, "Every
2 person or entity or corporation which commits
3 unlawful use of voter data" -- that's a defined term
4 -- "is guilty of a fourth degree felony." That's a
5 standalone criminal provision.

6 And the way it defines unlawful use is by
7 incorporating by reference purposes prohibited under
8 Article 5.

9 And so from the beginning, Voter Reference
10 has been misinterpreting the law by having the
11 understanding that because 1-4-5.5 says "purposes"
12 and then 1-4-5.6 also mentions "purposes," the two
13 are related. They're completely unrelated -- well,
14 maybe not completely, but they are unrelated.

15 So under Article 20 of the Election Code,
16 Article 20 creates criminal penalties for every
17 violation of the election code for which a standalone
18 criminal penalty is not provided. And Article 20,
19 specifically 1-20-10, defines false swearing as
20 essentially making a false oath knowing that it is
21 false.

22 So the Election Code has upwards of -- I
23 want to say 16 -- between a dozen and 16 statutes --
24 that mention affidavits, and do not provide a
25 criminal penalty for making a false affidavit. And

1 so those, including 1-4-5.5, are covered under
2 Article 20.

3 And so Local Labs, if we can prove that
4 they made a false statement when they signed the
5 affidavit, they're guilty of a fourth degree felony
6 for making a false swearing under 1-20-10, because
7 that's a penalty for a statute such as 1-4-5.5 that
8 does not provide a standalone criminal liability.

9 Now, Local Labs, by providing the data to
10 VRF, and VRF by providing it to the world on the
11 website violated 1-5-5.6, which again, contains its
12 own independent criminal penalty. And therefore, to
13 interpret it as either being the criminal penalty for
14 5.5 or 5-22, doesn't make sense. Because those
15 sections have their own criminal provisions that
16 apply to them. And also ignores the plain language
17 of 1-4-5.6, which says "purposes prohibited under
18 chapter 5."

19 So, Your Honor, I want to address what you
20 said in the beginning. This case -- the importance
21 of this distinction goes, in my opinion, quite beyond
22 who has the right interpretation of state law.

23 In order to have standing before this
24 federal court, plaintiffs have to show that they're
25 under a credible threat of prosecution. They have

1 not been charged. So for them to have standing, they
2 have to show a credible threat of prosecution.

3 The parties -- so it's not a question of
4 who, which is the state agency that interprets the
5 law, rather it's a question of who can threaten with
6 prosecution. And that's the Attorney General's
7 Office. By statute, for every suspected violation of
8 the Elections Code, the Secretary of State makes a
9 referral to the Attorney General's Office, and the
10 Attorney General's Office is the prosecuting entity.

11 And I have stated that many times on the
12 record, including in pleadings, that it is the
13 Attorney General's position, as a party in this case,
14 that if there is any criminal liability on the table,
15 it is not for violating the so-called use
16 restrictions under 1-4-5.5(c). It is for
17 providing -- otherwise providing access or otherwise
18 surrendering or selling or lending the voter data
19 under 1-4-5.6.

20 And so it goes to standing, which of course
21 is a jurisdictional requirement. It goes way beyond
22 which attorney has the better interpretation of the
23 statute in their opinion.

24 THE COURT: All right. I think I got you
25 to walk through the statutory provisions that make

1 Vote Reference's use of the data unlawful. And I
2 think you may have answered the next question in
3 part. But I want to make sure that I understand it.
4 Can you walk us through which statutory provisions
5 you think make Local Labs' acquisition or sharing of
6 the data unlawful?

7 MS. SERAFIMOVA: So Local Labs signed an
8 affidavit promising to use the data for, first, Local
9 Labs is not a party in this lawsuit. But setting
10 that to the side for a moment, they signed an
11 affidavit promising to use the data only for
12 governmental or, and election campaign purposes.
13 They signed that affidavit with the knowledge that
14 they were going to sell it to a client. They were
15 also put on notice in the affidavit that willful
16 selling of the data is also a violation of New Mexico
17 law. That is on their form. And so they have
18 committed false swearing, and they have also violated
19 1-4-5.6 by knowingly handing over, selling, providing
20 access to -- however we want to describe the
21 conduct -- the transaction between the two parties,
22 of the data to VRF.

23 THE COURT: Do you read Section 1-5-22 as
24 applying to anyone other than a government employee
25 or contractor, a data processor who handles the data?

1 MS. SERAFIMOVA: No, of course not. But

2 1-4 --

3 THE COURT: So that is limited just to

4 government employees and contractors?

5 MS. SERAFIMOVA: On its plain language,

6 absolutely.

7 What we are under is 1-4-5.6, which

8 defines --

9 THE COURT: How do you, though, then, move
10 this language from 1-5-22 to then covering, like
11 using it in the form and the affidavit, and those
12 things, how do you move it over, if you just make
13 that concession?

14 MS. SERAFIMOVA: So, okay, 1-4-5.6 says,
15 "Unlawful use of voter data," which under (b) is a
16 4th degree felony, and under (b) applies to any
17 person or organization, not data processor, not
18 employee of the state. So it says, "Unlawful use of
19 voter data" -- skipping over other uses -- "consists
20 of the knowing and willful use of such information
21 for purposes prohibited by the Voter Records System
22 Act." And that is Article 5. That is where 22
23 resides.

24 And so we may disagree as to whether this
25 was the best way to accomplish what the legislature

1 accomplished, but the plain language says: Look at
2 Chapter 5, see what purposes and uses are prohibited
3 there, that's what we are now making unlawful with
4 respect to the whole world.

5 THE COURT: The New Mexico Secretary of
6 State's website states that, "Servis," S-E-R-V-I-S,
7 "the State Elections Registration and Voting
8 Integrity System Data may be purchased for government
9 and campaign purposes only. This data includes each
10 voter's name, address, telephone number, with voter's
11 consent, year of birth, party affiliation and
12 registration data such as county, precinct, and
13 district information. New system features include
14 real-time updates and voter history." Does a
15 one-time payment include updates to the data?

16 MS. SERAFIMOVA: No, it's a snapshot, as
17 Your Honor said.

18 So this is intended, for example, if Your
19 Honor were a state judge who needed to run to
20 reelection, you could obtain that data. Okay, whose
21 door do I need to knock on? Who do I need to send a
22 mailer to? And perhaps it's different for judges.
23 I'm sorry, maybe that's not the best example. But if
24 you're running for office in the State of New Mexico,
25 you're entitled, under election campaign purposes, to

1 State to log requests for voter data. Has the State
2 granted or denied access to this data to any
3 organizations that are similar to Voter Reference?

4 MS. SERAFIMOVA: Well, as the witnesses
5 will testify, we -- well, so we do have -- the Deputy
6 Secretary of State will testify today, and the
7 Director of Elections. Neither one of them have
8 heard of Catalist or i360 outside of this proceeding.
9 In fact, I brought it to their attention for the
10 first time when we were preparing for today's
11 hearing.

12 And they will testify that whenever they
13 receive information that indicates unlawful conduct,
14 they have referred it to the Attorney General's
15 Office. They have not received information for
16 anyone other than Voter Ref, and we do have one other
17 referral, which has to do with an audit,
18 quote/unquote audit, in Otero County.

19 But this is unprecedented. As VRF has
20 admitted numerous times, what they're doing is
21 unique. It's happening for the first time. It's
22 unprecedented. So we haven't seen this situation
23 before.

24 THE COURT: All right. Let me move on from
25 state law, and let you comment a little bit on the

1 there is no new interpretation of state law. Just
2 because, for whatever reason, plaintiffs have
3 misinterpreted the information they've read or the
4 information they received from us, that doesn't mean
5 that there has been an actual change in position from
6 the Secretary of State's Office or the Attorney
7 General's Office. There has not been, and we'll show
8 that, and we have the documents and the witnesses to
9 show that.

10 And Your Honor asked what's the difference
11 between voter data and DMV data. A lot of it is the
12 same. It's my name, it's my address, it's my gender,
13 perhaps my phone number. The distinction is my party
14 affiliation, my voting history. Those are important
15 to me personally as a voter.

16 The interest to Vote Ref in having access
17 to that is much less, especially because I am not
18 willing to give it to them. And our legislature has
19 given me the right to not -- for them to not have
20 access to it.

21 And so, again, I just want to finish with,
22 you know, the number one issue, in our opinion, is
23 the issue of standing. This is not about, again,
24 which attorney has the right interpretation of the
25 law. We, as the prosecuting entity, have said

1 repeatedly in this case that if there is any criminal
2 liability, it is not under 1-4-5.5, and it is not
3 under the use restrictions. It is providing access
4 to or otherwise surrendering the data, or perhaps
5 selling it, or it was put on the website.

6 Thank you.

7 THE COURT: All right. Thank you, Ms.
8 Serafimova.

9 All right. Mr. Greim, do you want to put
10 on your evidence?

11 MR. GREIM: Sure. We'll call Tina Swoboda.

12 THE COURT: Ms. Swoboda, if you'll come up
13 and stand next to the witness box on my right, your
14 left, before you're seated Ms. Rotonda, my courtroom
15 deputy, will swear you in.

16 MS. SERAFIMOVA: Your Honor, we do have Mr.
17 Dylan Lange waiting to be admitted. He's not a
18 witness. He's the Secretary of State's general
19 counsel.

20 THE COURT: Okay. So we'll get him
21 admitted. Why don't you go ahead and admit him
22 first.

23

24

25

1 administrations in the Arizona Secretary of State's
2 Office. I'm a certified deputy registrar with
3 Maricopa County. And I was the state director of
4 election day operations in the 2020 campaign for
5 President Trump.

6 Q. And what led you to joining VRF?

7 A. I got a recruitment phone call.

8 Q. And when did you join VRF?

9 A. It's a year today, May 17, 2021.

10 Q. Happy anniversary.

11 A. Thank you.

12 Q. So what is VRF? Just, if you could give us
13 a thumbnail sketch.

14 A. It's a foundation dedicated to publishing
15 the voter rolls online for free forever to promote
16 transparency and get the public engaged in
17 understanding how the process works, and to try to do
18 their public oversight duties under the National
19 Voter Registration Act.

20 Q. Why is VRF so interested in public access
21 to voter data?

22 A. We think it's essential. So the National
23 Voter Registration Act public disclosure provision
24 says the public has oversight of voter list
25 maintenance. We do not believe the public has

1 meaningful access to the voter lists right now. In
2 many states they are prohibitively expensive. They
3 are huge files. You would have to be a database
4 analyst to open the giant file. And so we don't
5 think the public has the ability to view the data in
6 a meaningful, clear, simple to understand way.

7 Q. So why are you so focused on the voter
8 rolls themselves?

9 A. They are everything in the election. The
10 election begins with who is eligible; that's the
11 voter roll. And the election ends with who gets vote
12 credit. That's the voter roll. You can't have an
13 election without it. That's the entire basis of the
14 process.

15 Q. Okay. Maybe you can walk us through now
16 what VRF does to fulfill its mission?

17 A. Sure. So we acquire the data. We map it.
18 So different states have different data variables in
19 their data sets. Some states give year of birth,
20 some give the whole birthday, some just give age.
21 Some have party affiliations, some don't. So we map
22 those variables within the data file and the voter
23 history file. In some states there are two separate
24 files. In some states it's all in one. And then we
25 map that up against our fields on our user interface

1 on VoteRef.com. And we publish it. That's on the
2 voter registration side.

3 And I do quarterly FOIAs now. I want to
4 update that every quarter going forward.

5 On the election side of Vote Ref we're
6 comparing the total ballots cast election-wide.
7 That's often called turnout. We don't look at a
8 particular context because there are under votes.
9 You know, people will leave a race blank. We just
10 want to know the total ballots cast as reported by
11 the election officials compared to the total voters
12 in the vote history file, with credit for having
13 voted.

14 And, you know, the numbers don't reconcile.
15 There are reasons for that. Every state is
16 different. I talked to Mississippi, and they said:
17 Hey, pull the canceled voters file, because we pull
18 the vote history out when we archive the voters. So
19 I'm holding Mississippi until I get that additional
20 data. I reach out to the state election official
21 and, hopefully, they work with us so we can
22 understand what we need to get to reconcile the data.
23 Sometimes they don't answer.

24 Q. What does VRF intend the public to do with
25 the data once they log on to the website?

1 A. So on the vote registration side, the hope
2 here is that they will take ownership of their voter
3 registration record, the people in their family, and
4 do their oversight that they are required to do under
5 the National Voter Registration Act.

6 On the election side, I can say my personal
7 hope on that is that there is a public policy
8 discussion about the chief election official being
9 required to reconcile those underlying data files
10 that come from counties and lower level
11 jurisdictions.

12 Q. Let's talk for a moment about the
13 experience that individuals have when they come to
14 the VoteRef.com website. First of all, does VRF tell
15 voters the purposes for which it wants them to use
16 the data?

17 A. Yes. So there is "about us." And there is
18 "terms of service." Then there is a disclaimer. I
19 tend to focus, you know, and promote: Don't do this;
20 you don't want to do this; these are things you can
21 do. And when you land on the landing page, it talks
22 about how we want transparency. And voter
23 registration rolls are public data, and we believe
24 the data belongs to the people, and they should be
25 able to access it in a way they understand.

1 Q. Is the pop-up and the terms and conditions
2 that come up, are those the same across the country,
3 or are they tailored to the states?

4 A. I've got a legal team. And I modify them
5 for every state I put up to ensure I'm in compliance
6 with the terms of service and privacy provisions
7 within each specific state. And we have a disclaimer
8 on every single voter detail page that cites the
9 specific language of the state with regard to
10 protections for people that are secured voters, like
11 stays at home, and that kind of thing, confidential
12 voters.

13 Q. Before we move on, because I don't think we
14 mentioned this concept yet. Could you explain that
15 concept to us, the secure voters or the protected
16 voters. What is that?

17 A. Yes. It's very important. So there are
18 law enforcement officials, victims of domestic
19 violence or stalking. There are many different
20 categories, depending on your state, of voters whose
21 records are protected and redacted. Their addresses
22 must not be shown. When I publish a file, before I
23 publish a file, I notify the chief election official,
24 and I send a link to the file they gave me back to
25 them, and say: It's my understanding you don't have

1 anyone in here under -- and then whatever the statute
2 and the program is. If that's not the case, let us
3 know. And if anyone in this list that you gave me
4 should seek to become protected, please notify me so
5 that I may redact them. And I've got a big glossary
6 for every state. And on each voter show page for
7 every state it tells them how to apply to become a
8 protected voter. And if they email me, I will redact
9 them immediately.

10 Q. By the way, did you do that in New Mexico?
11 In other words, did you send the voter file to the
12 Secretary of State with the caution and the request
13 about any protected voters here?

14 A. I did.

15 Q. And did the Secretary of State get back to
16 you?

17 A. They did not.

18 Q. Did they acknowledge your email?

19 A. No, they did not.

20 Q. Let's talk for a minute -- I did my best
21 with the Court, but I want to ask you now a little
22 bit about the election side of your analysis. You
23 told us before what you're comparing, the two items
24 that you're comparing. And what do you call the gap
25 between those two?

1 A. A discrepancy.

2 Q. And does the discrepancy mean that there is
3 fraud?

4 A. Absolutely not.

5 Q. What does the discrepancy mean to you when
6 you see it?

7 A. I think what it most likely is in cases
8 where the state works with us, it's a recordkeeping
9 issue, in the sense that states do not run elections.
10 There is a chief designated by the Help America Vote
11 Act; there is a chief election official in every
12 state. But counties run elections, lower-level
13 jurisdictions run elections.

14 So when secretaries of state or state board
15 of elections are certifying the data or providing
16 access to the data, they're relying on the uploads
17 they get from the counties in lower level
18 jurisdictions. So if some precinct wasn't uploaded
19 by a county and then that county didn't upload it to
20 the state, the numbers could be off.

21 Like the case of Nevada, they delete the
22 record when someone moves from one county to another.
23 So when they do that, they're deleting the vote
24 history.

25 As I said, in the case of Mississippi, West

1 Virginia realized they had inadvertently, when they
2 archived some voters, taken the vote history with
3 them, which led to the discrepancy. So I think it's
4 process issues.

5 Q. So Ms. Swoboda, what action, if any, do you
6 take when you find a discrepancy?

7 A. I notify the chief election official, and I
8 ask if we could have a call or come meet with them,
9 and learn about their process, so that I can try to
10 identify where the discrepancy is coming from.

11 Q. And some state election officials do that
12 with you; right?

13 A. Yes.

14 Q. And then what's the end result after this
15 meet and confer process?

16 A. We get that number way down. So, you know,
17 if North Carolina is off by 42. In Colorado we got
18 the number down; we reduced it by 11,000. West
19 Virginia less than one half of 1 percent. And the
20 likelihood of why it can't get perfect reconciliation
21 is, again, that some lower level jurisdiction
22 somewhere along the line didn't upload a full file.

23 Q. Why do you bother to do this?

24 A. Because people have to understand how the
25 system works, and they have to have confidence in how

1 the system works. And right now they don't
2 understand. And I think there is a great amount of
3 concern in the public. I think we need to do better
4 oversight. This is a process that's meant to be
5 overseen by the public. And if the public doesn't
6 understand it, they're going to lose confidence, and
7 then they are not going to participate. And I see
8 that a lot. And on a personal level, that frightens
9 me. I want people in the system to have confidence
10 in the system, and they do that when they have
11 transparency.

12 Q. Let me ask you, did you reach out to the
13 New Mexico Secretary of State after you found a
14 discrepancy in New Mexico?

15 A. Yes.

16 Q. Could you please turn to Exhibit P-2 in
17 your binder?

18 A. I don't have P in my binder.

19 Q. You may have plain old numbers.

20 A. I do. Yes, it's my email, yeah.

21 Q. So do you recognize this document?

22 A. I do.

23 Q. What is this?

24 A. It's my notification email to the Secretary
25 of State of New Mexico telling them about the results

1 that I found, asking them to check the voter file to
2 make sure there is no protected voter, and asking if
3 we could have a meeting with the staff or a call with
4 the staff to understand their data.

5 Q. Okay. So did you then have a call with the
6 staff?

7 A. No.

8 Q. I'm sorry, did the New Mexico Secretary of
9 State or anyone in her office respond to you?

10 A. No, they did not.

11 MR. GREIM: Move to admit Exhibit P-2.

12 THE COURT: Any objection?

13 MS. SERAFIMOVA: No objection.

14 THE COURT: All right. P-2 will be
15 admitted.

16 Q. Now, after you sent this email, did you
17 publish the result of your analysis for New Mexico?

18 A. I did.

19 Q. Okay. If you take a look at Exhibit P-1; 1
20 in your binder.

21 A. Got it.

22 Q. Do you recognize this document?

23 A. Yes, that's the press release for New
24 Mexico's publication.

25 Q. And in here you report the discrepancies in

1 your own open records team working with you now?

2 A. Yes.

3 Q. In this case, though, did another entity
4 request that data?

5 A. Yes, Local Labs requested that data before
6 I came on.

7 Q. And did it do this in other states for VRF
8 as well?

9 A. Yes.

10 Q. Why use Local Labs?

11 A. It's my understanding they're a company
12 that does public records requests and FOIAs, and they
13 work in that area all the time, so they're more
14 familiar with the forms and who to contact, and have
15 people on the ground.

16 Q. How was Local Labs reimbursed for its
17 services?

18 A. I think they get a flat rate for every
19 state; that includes doing the research on who to get
20 the data from, filing the proper forms, making sure
21 they're in compliance, and then acquiring the data
22 itself.

23 Q. When was the New Mexico data first posted?

24 A. I posted New Mexico, December, I believe,
25 16, 2021.

1 Q. And we've already talked about your
2 analysis of that data. Let me ask about the time
3 that this data was up for -- maybe it was three
4 months. Did the New Mexico site have a pop-up
5 requiring the user to agree to terms of service?

6 A. Yes.

7 Q. And was that tailored from New Mexico law?

8 A. Yes.

9 Q. What do those terms of service require that
10 the user agree to?

11 A. To only use the records for, I believe,
12 election or governmental related purposes, and that
13 they must not be used for any commercial purpose.
14 And then it defines all the various things that might
15 conceivably fall under commercial purposes.

16 Q. Did VRF understand that its own use was
17 allowed under New Mexico law?

18 A. Yes.

19 Q. Did the New Mexico site show this chain of
20 custody information for the data?

21 A. Yes.

22 Q. What did that show?

23 A. A chain of emails between Local Labs and
24 the New Mexico Secretary of State.

25 Q. Did it show the date on which Local Labs

1 requested the data?

2 A. Yes.

3 Q. And any user of the website could click
4 through and see that?

5 A. Yes.

6 Q. Did anyone ever accuse VRF of trying to
7 hide its use of Local Labs or the source of its data?

8 A. I have had no contact or accusation to that
9 effect. I have since read some documentation back
10 and forth in this litigation, that looks like people
11 were talking about it. But no one has ever spoken to
12 us about it.

13 Q. When did you first learn that the Secretary
14 of State had accused VRF of criminal conduct?

15 A. ProPublica published an article about it in
16 March.

17 Q. Did the Secretary ever reach out at any
18 time to say they were making a criminal referral?

19 A. No.

20 Q. Did the office ever reach out to try to
21 ascertain the purpose of the Vote Ref site or ask any
22 questions about the site?

23 A. No.

24 Q. Did the office ever try to contact you to
25 see if it could convince you to remove the materials?

1 A. No.

2 Q. Did it ever contact you to try to find some
3 way to accomplish your goal, while also complying
4 with the Secretary's view of the law?

5 A. No.

6 Q. Did the AG ever do this?

7 A. No.

8 Q. Has there ever been any contact from the
9 AG's office to VRF?

10 A. No.

11 Q. Why did VRF take the New Mexico portion of
12 the database down?

13 A. Because we read in the ProPublica article
14 that the New Mexico Secretary of State thought we
15 were violating the law and had referred the matter to
16 the Attorney General for prosecution. And so we took
17 it down until we could figure out what we had done
18 wrong and how to be in compliance.

19 Q. I just have one other question for you.
20 Are you aware of an entity called Catalist?

21 A. Yeah, I'm aware of several entities and
22 political organizations that acquire voter data in
23 all 50 states.

24 Q. And just to be clear, so is your answer
25 yes?

1 A. Yes, I am aware of that group.

2 Q. It's spelled Catalist, but L-I-S-T on the
3 end; is that right?

4 A. I don't know if it's Y-S-T or I-S-T.

5 Q. So what is your understanding of what
6 Catalist does?

7 A. They acquire voter registration data. And,
8 you know, I believe they've got a particular lean in
9 their partisan view, and they use that data to
10 contact voters to promote policies that they wish to
11 advance.

12 Q. And do they share or sell that data with
13 their own clients?

14 A. I believe they do, yes.

15 MR. GREIM: No further questions.

16 THE COURT: Let me ask you this question,
17 I'm directing this to Voter Reference, and if you
18 want to get more information from the witness on
19 this. It may not apply to her. But does VRF crowd
20 source? Is it finding the discrepancies or is that
21 done just by trained VRF staff, and the public are
22 just verifying individual data?

23 THE WITNESS: It is the latter, sir. My
24 data director is the former voter registration
25 database administrator for the Secretary of State of

1 Arizona, and my assistant data director is the former
2 Cochise County Recorder Voter Registration Director.
3 And they pull the data out of the vote history file,
4 and we take the turnout number, the total ballots
5 cast from the official records submitted to the EAC
6 by the state or posted on their website or on their
7 canvass, when they give it to us. And we do that
8 data, and we just post those exact two data points,
9 and we post the documentation it came from. The
10 public is not given access to that data.

11 THE COURT: All right. Anything else?

12 BY MR. GREIM:

13 Q. Just to follow up. You're talking about
14 the election side?

15 A. Correct.

16 Q. On the voter registration side, is that
17 reviewed for errors, crowd sourced?

18 A. So the idea is that the public is doing
19 their oversight as envisioned in the NVRA, and
20 reviewing their voter registration records on the
21 voter registration side. So there are things like
22 the first name is a comma, and the last name is the
23 letter A, and the registration date and the date of
24 birth are 1/1/1900. So there are a lot of records
25 like that. We don't scrub or clean the data. We're

1 putting it up exactly as it's received, in the hope
2 that the public will do their oversight and report
3 their errors to the county clerk or to the election
4 official, who is the only person in power to correct
5 them.

6 THE COURT: So the public does not have
7 access to the discrepancy data?

8 MR. GREIM: I think that's right, other
9 than through the press release.

10 THE WITNESS: Correct.

11 THE COURT: All right. Anything else, Mr.
12 Greim?

13 MR. GREIM: Nothing else, Your Honor.

14 THE COURT: All right. Ms. Serafimova, if
15 you wish to have cross-examination of Ms. Swoboda.

16 MS. SERAFIMOVA: Thank you, Your Honor.
17 Yes.

18 CROSS-EXAMINATION

19 BY MS. SERAFIMOVA:

20 Q. Good afternoon, Ms. Swoboda.

21 A. Hello.

22 Q. Give me just a second. So you mentioned
23 that you started May of 2021 in your current
24 position; right?

25 A. Correct.

1 about a 15-minute break and come back and continue
2 the testimony. All right. We'll be in recess for
3 about 15 minutes.

4 (The Court stood in recess.)

5 THE COURT: All right. Ms. Swoboda, I'll
6 remind you that you're still under oath.

7 Ms. Serafimova, if you wish to continue
8 your cross-examination of Ms. Swoboda, you may do so
9 at this time.

10 MS. SERAFIMOVA: Thank you, Your Honor.

11 (A discussion was held off the record.)

12 BY MS. SERAFIMOVA:

13 Q. Okay. Ms. Swoboda, so we were talking
14 about what you've been referring to as your FOIA
15 request?

16 A. Yes.

17 Q. Do you remember in what month you made
18 those?

19 A. I'm so sorry, I don't. And I don't have my
20 phone, or would I look for you.

21 Q. And do you have this binder that's provided
22 by your counsel?

23 A. Yes.

24 Q. Okay. Can I ask you to go to Plaintiffs'

25 Exhibit 4?

1 A. Email from March 11.

2 Q. And if you go to the second page, there is
3 actually a February 15, 2022 email as well?

4 A. Yes.

5 Q. Is this what you've been referring to?

6 A. Yeah, those are the initials of my former
7 employee on the February 15th. This -- yeah, this is
8 the canceled voters and the total ballots cast. And
9 then on the March 10th, it looks like they're just
10 following up on that one. So there is another one
11 somewhere. But yes, this looks like the look-back on
12 canceled voters request, yes.

13 Q. So can you tell me now whether or not you
14 signed an affidavit, as required under 1-4-5.5?

15 A. It does not appear that for this email
16 request an affidavit was given to me by the staffer,
17 no.

18 Q. Okay. And do you know whether or not this
19 email communication meets the State's requirements
20 for IPRA requests, which is the state statutes?

21 A. I do not. And I would suggest that this is
22 probably why they use Local Labs, because Local Labs
23 did the research and did the proper form; whereas, my
24 team sent an email. So maybe that's not reflecting
25 as well as us taking over for Local Labs. But yes,

1 Q. Forgive me. It's on the second page,
2 second -- so we have a one-sentence paragraph, then
3 the next paragraph in the middle first sentence
4 says -- and this is something attributed to you --
5 "We're well on our way to accomplishing something
6 that has never been done before."

7 Is that a true statement?

8 A. Yes. To my knowledge, no one has ever
9 published the voter registration records for every
10 state online, for free, for the public forever, no.

11 Q. Catalist has not done that; correct?

12 A. I don't know all of Catalist's business, so
13 I could not say. I think they have clients. I don't
14 know. I know the political parties publish the data
15 online.

16 Q. Let me back up. You just said that to your
17 knowledge, no one else has done this. And yet, when
18 I asked you: Has Catalist done it, you say you don't
19 know. So which one is it?

20 A. So, to my knowledge, no other entity has
21 tried to publish all 50 voter registration records
22 for all 50 states for free. I believe Catalist
23 charges people for their services. I don't charge
24 anybody to access my data.

25 Q. When you say you believe, what is that

1 belief based on?

2 A. The belief is based on that they're
3 political consultants, who in my experience, don't --
4 or, you know, give things away for free. So that's
5 just my belief. I do not know.

6 Q. Okay. You do not know?

7 A. No.

8 Q. So, and the same question for i360. As far
9 as you know, they are not doing what VRF wanted to do
10 with New Mexico?

11 A. I360 has all the data for the states. And
12 they have it on apps, and they give it to members of
13 the party, like precinct committeemen who do
14 canvassing or people who can get out the vote. So
15 i360 pays, I believe, for the data. And I think they
16 marry that data to other meta data.

17 Q. So their product sounds something very
18 different?

19 A. It does to me. What I'm trying to do is
20 give public access for free. I'm not trying to
21 charge anybody.

22 Q. Okay. Now, part of your claim today, and
23 in this case today is that Catalist, and potentially
24 i360 are doing something illegal, but they have not
25 been referred for prosecution by the Secretary of

1 fair?

2 A. Possibly. I don't know the background of
3 everybody. So I'll go with ya.

4 Q. Well, I'm going with you, actually. So
5 let's keep --

6 A. I do not know how many people that work in
7 the organization have a journalistic background with
8 regard to education.

9 Q. Education, or --

10 A. Well, you asked me if anybody had been
11 educated in the ethics of a journalist. So I presume
12 you were talking about having, like, a journalism
13 degree, or having worked in a journalism shop, and
14 discussed AP. This is a vocabulary we use in an
15 article, and this is what AP considers to be ethical,
16 that kind of thing.

17 Q. Okay. All right. So let's look at --
18 well, if we can just look at P-1 and P-2, which are
19 the two documents you discussed during your direct
20 examination. They talk about what you've referred to
21 as the discrepancy in New Mexico, right?

22 A. Yes.

23 Q. Okay. So what your document and what your
24 math showed was that, on November 3 -- and I'll round
25 up, if that's okay -- but on November 3, 928,000-plus

1 voters were reported by canvassing boards and just
2 the official turnout; is that correct?

3 A. The 928,172, yes, is the turnout of how
4 many ballots were cast.

5 Q. Okay. So 928,172 ballots cast November 3?

6 A. Correct.

7 Q. And then you compare that to the number,
8 924,328, which is the number of people shown to have
9 voted on November 3 on the voter rolls that you
10 received from the Secretary of State's Office?

11 A. That's the number of electors whose records
12 still exist in the voter file as of April of 2021,
13 who have a vote credit for casting a ballot in the
14 November 3, 2020 general election.

15 Q. Okay. You said something important there.
16 "Whose records still exist."

17 A. Yes.

18 Q. So your math says 928 on November 3, but by
19 April 13, 924 still exist?

20 A. Yes.

21 Q. Okay. So where is the problem?

22 A. The problem is that -- well, I would say
23 the problem is the numbers don't reconcile. And
24 nobody in the Secretary of State's Office responded
25 to our email to say: Well, here in New Mexico we

1 archive voters. When we cancel them, we delete them.
2 We move them. We purge them. So we don't know the
3 answer to the question of why they don't balance
4 because nobody in the New Mexico office responded to
5 our request for us to understand, which is why I say,
6 if we could please discuss with you and get a better
7 understanding. And I say, please provide feedback,
8 and if there is a factor or factors we may be unaware
9 of, that would explain the discrepancies. And you
10 are asking literally -- every state does it
11 differently. So as I said, Nevada deletes you
12 totally. West Virginia --

13 Q. Can I stop you there, because I just want
14 to -- we are pressed for time, so --

15 A. Sure.

16 Q. But the bottom line is, you don't know why
17 there is a difference; right?

18 A. Correct; that's why I say "discrepancy."

19 Q. Okay. But in your press release, right,
20 you say, "These discrepancies don't necessarily
21 indicate fraud, but the differences between the voter
22 list and the election canvass indicates at the very
23 least issues with recordkeeping."

24 You don't know that, do you?

25 A. I would say that what I stated in this

1 press release is absolutely correct. And so I'm
2 going to go to another state for a minute.

3 Q. No --

4 A. Well, no, you asked me a question, and I'm
5 going to answer.

6 MS. SERAFIMOVA: Your Honor, I ask for your
7 assistance.

8 THE COURT: If Mr. Greim wants to bring
9 something out, he will.

10 THE WITNESS: Okay.

11 THE COURT: You answer Ms. Serafimova's
12 questions, and then Mr. Greim can bring it out.

13 THE WITNESS: Thank you, sir.

14 A. The standard is --

15 Q. If I may, let me just restate my question
16 so we can get back on-track.

17 A. Okay.

18 Q. So you just admitted that you don't know
19 why there is a difference in the two numbers, and yet
20 on December 16th you published in a press release the
21 statement that "at the very least, there are issues
22 with recordkeeping"?

23 A. And that is correct. That statement is
24 correct. There are issues with recordkeeping. You
25 do not have a record of the canceled voters in the

1 file in April, and you should. You should have a
2 record of every voter in the file.

3 Q. How do you know what's in the file?

4 A. I looked at the file.

5 Q. You have looked at voter data, which is
6 something like a spreadsheet. You don't know --

7 A. No, I looked at the raw file from the
8 database. It's an export of the raw file from your
9 database, from the Secretary's database.

10 Q. So you have looked in the voter files that
11 are kept at the Secretary of State's Office, that are
12 not on the online system; is that what you're
13 representing to us?

14 A. I am representing to you that the Secretary
15 of State's Office provided an export of the data in
16 the file that is available to members of the public
17 who properly complete the affidavit form.

18 Q. Okay. So by statute, voter data actually
19 only includes name, gender, address, party
20 affiliation, and voting history?

21 A. Correct. Voting history. So why would
22 there be voting history that is missing in the file?

23 Q. But there isn't. Where do you say here
24 that there is voting history -- there are people that
25 are missing, but not their voting history.

1 voter data?

2 A. Yes, she has made statements.

3 Q. And does the office first ensure that those
4 statements are accurate before they are made?

5 A. If you're referring -- if you could be
6 specific about a certain statement. But, generally,
7 anything that we provide to the public, yes, it is
8 reviewed to ensure that it's accurate.

9 Q. Are you aware that the Secretary of State
10 has ever made a statement to the public about access
11 to voter data that was incorrect?

12 A. No.

13 Q. So it's your position that the statements
14 of the Secretary -- and we'll go through them, I'm
15 just getting some generalities here first -- it's
16 your position that the statements the Secretary of
17 State has made about access to voter data have all
18 been correct under New Mexico law?

19 A. I can't speak to a statement without
20 knowing what you're referring to. I can answer that
21 our office publicly makes information available that
22 is accurate and correct.

23 Q. Okay. Well, we'll go through the
24 individual ones here in just a moment.

25 Let's talk about the forms now. Who

1 designs the forms?

2 A. Someone in the Bureau of Elections.

3 Q. Okay. Who approves them?

4 A. I participate in that approval, along with
5 a legal review, usually done by our general counsel
6 or our Deputy Secretary of State.

7 Q. Has the Secretary of State's Office ever
8 authored a form that was inaccurate under New Mexico
9 law?

10 A. Ever in the history of the office, I can't
11 speak to.

12 Q. Okay. Fair enough. Let's say in the last
13 two years?

14 A. Not to my knowledge.

15 Q. So we're going to look through these forms
16 in a second. But your testimony is that every single
17 form that's been used in the last two years has been
18 consistent with New Mexico law?

19 A. I think you're referring to the affidavit.
20 And so we did make a correction to that affidavit
21 once we were made aware that it needed to more
22 strictly align to the statute. So there was a
23 correction made to the affidavit.

24 Q. Okay. Well, let's just jump right into
25 that. I wasn't going to do that quite yet, but now

1 point directly to, in your scenario described,
2 provide access to or otherwise surrender this
3 information.

4 Q. Now, you're looking at the newer one,
5 though, not the one that Local Labs signed; right?

6 A. I am using that as a reference, because I
7 don't have the Election Code in front of me. So it
8 is the distribution, the providing access to, the
9 duplication, and sharing of that information.

10 Q. I see. So if anyone shares -- if any
11 requester shares information, it is your position
12 that they have made a false affidavit, and they have
13 violated the law; is that correct?

14 MS. SERAFIMOVA: Objection, Your Honor.

15 THE COURT: Well, she can state her
16 position. If you want to argue something
17 different -- but I think I need to hear from the
18 witness. Overruled.

19 A. I'm sorry. Can you restate your question?

20 Q. Well, I'm just going to go to the form.
21 I'll go along with you and make this a clear
22 question, and this will be just about it, because
23 we're all turning into pumpkins and squashes here.

24 I'm on Exhibit I. So it is your position,
25 first of all, that the authorization is a guide to

1 what New Mexico law allows; correct?

2 A. Correct.

3 Q. And there are four bullet points there that
4 you've got to initial; right?

5 A. Right.

6 Q. And the very first one says, "sell, loan,
7 provide access to, or otherwise surrender
8 information"; right?

9 A. Correct.

10 Q. So it's your position that if anyone does
11 those things, regardless of why they do it, they are
12 violating New Mexico law?

13 A. Correct.

14 MR. GREIM: Okay. Your Honor, we'll stop
15 there.

16 THE COURT: All right. Do y'all want to
17 get back together and continue this? I mean --

18 MS. SERAFIMOVA: Not necessarily in person,
19 but yes.

20 THE COURT: I'll make it as easy as y'all
21 agree to do. If you disagree, then I can get back on
22 the phone and work it out with you. But I assume you
23 want to continue this hearing?

24 MR. GREIM: We'll agree one way or another.

25 THE COURT: Okay. But y'all want to get

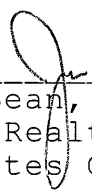
C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on May 24, 2022.



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